

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

Civil Action No.: 05-CV-10780-NMG

PLAINTIFF'S REQUEST FOR ISSUANCE OF A NOTICE OF DEFAULT

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS:

The Ground Round Independent Owners Cooperative, LLC (the "IOC"), requests that the Clerk of this Court issue a notice of default against Defendant C.T.W. Development Corporation pursuant to Fed. R. Civ. P. 55(a).

This request is based on the Affidavit of Juan Alexander Concepción, incorporated herein by reference, which shows:

1. C.T.W. Development Corporation was duly served with the summons and complaint on April 22, 2005.
2. The Return of Service filed with this Court on May 3, 2005 establishes that service of process was proper pursuant to Fed. R. Civ. P. 4. A true and accurate file-stamped copy of the Return of Service is attached to the Affidavit of Juan Alexander Concepción as Exhibit "A."

3. C.T.W. Development Corporation has failed to timely plead or otherwise respond to the complaint.
4. The applicable time limit for responding under Fed. R. Civ. P. 12 has expired.
5. On information and belief, C.T.W. Development Corporation is a company organized under the laws of the State of Ohio with its principal office in Youngstown, Ohio. True and accurate copies of corporate documents reportedly on file with the Ohio Secretary of State are attached to the Affidavit of Juan Alexander Concepción as Exhibit "B."
6. On belief and information, C.T.W. Development Corporation is not an infant or an incompetent person.
7. On belief and information, C.T.W. Development Corporation is not in the military service of the United States or its allies, as defined in the Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C. Appendix, § 520(1).

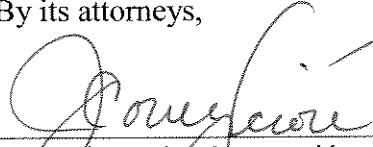
WHEREFORE, the IOC requests that the Clerk of this Court issue a notice of default against C.T.W. Development Corporation pursuant to Fed. R. Civ. P. 55(a).

Signed under penalties of perjury.

Respectfully Submitted,

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

By its attorneys,

A handwritten signature in black ink, appearing to read "Juan Alexander Concepción", written over a horizontal line.

Juan Alexander Concepción, BBO No. 658908
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110-2131
(617) 345-1000

Craig R. Tractenberg, Esq. (PA I.D. No. 34636)
(Admission *Pro Hac Vice* to be filed)
NIXON PEABODY LLP
1818 Market Street, 11th Floor
Philadelphia, PA 19103
(215) 246-3525

Dated: May 18, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

Civil Action No.: 05-CV-10780-NMG

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S REQUEST FOR ISSUANCE OF A
NOTICE OF DEFAULT**

Juan Alexander Concepcion, being duly sworn, deposes and states:

1. My name is Juan Alexander Concepción.
2. I am an associate with the law firm of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110 and am duly admitted to practice law in the Commonwealth of Massachusetts and before this Court. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.
3. I am an attorney of record for Plaintiff The Ground Round Independent Owners Cooperative, LLC, in this action.
4. On April 20, 2005, I caused copies of the summons and complaint in this action to be delivered to Richard S. Fabian, Process Server in the State of Ohio. Pursuant to Fed. R. Civ. P. 4, Mr. Fabian properly served the summons and complaint on C.T.W. Development Corporation on April 22, 2005 and certified that fact to this Court in a Return of Service, dated April 22,

2005. The Return of Service was duly filed with this Court on May 3, 2005. A true and accurate file-stamped copy of the Return of Service is attached to this Affidavit as Exhibit "A."

5. C.T.W. Development Corporation has failed to timely serve or file an answer or otherwise respond to the complaint in this action.

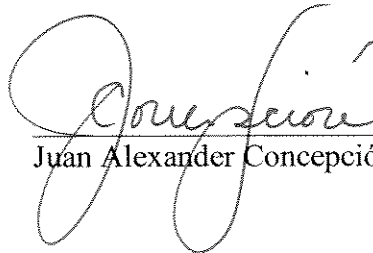
6. Under Fed. R. Civ. P. 12(a)(1)(A), the time limit for responding to the complaint has expired, and the time for C.T.W. Development Corporation has not been extended by any stipulation of the parties or any order of the Court.

7. On information and belief, C.T.W. Development Corporation is a company organized under the laws of the State of Ohio with its principal office in Youngstown, Ohio. True and accurate copies of corporate documents reportedly on file with the Ohio Secretary of State are attached to this Affidavit as Exhibit "B."

8. On information and belief, C.T.W. Development Corporation is not an infant or incompetent person within the meaning of Rule 55(a) because it is a corporation.


9. On information and belief, C.T.W. Development Corporation is not in the military service of the United States or its allies, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix, § 520(1), as amended.

Signed by me on this 18th day of May, 2005, at Boston, Massachusetts.



Juan Alexander Concepción

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of May, 2005.



Deborah Svirtunas
Notary Public in and for the Commonwealth of
Massachusetts
Commission expires: December 17, 2010

CAO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of Massachusetts

CLERK'S OFFICE

The Ground Round Independent
Owners Cooperative, LLCMAY - 3 - 2005
SUMMONS IN A CIVIL CASEV.
Charles Whitman a/k/a Chuck Whitman,
CTW Development Corporation,
Restaurant Concepts Unlimited
Corporation

CASE NUMBER:

COPY

05 10780 NMG

TO: (Name and address of Defendant)

CTW Development Corporation
945 Windham Court, Suite 5
Boardman, OH 44512

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Juan A. Concepcion
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.



CLERK

(By) DEPUTY CLERK

DATE

4-19-05

RETURN OF SERVICE

Service of the Summons and complaint was made by me⁽¹⁾

DATE

April 22, 2005 1:00 PM

NAME OF SERVER (PRINT)

Richard S. Fabian

TITLE

Process Server

Check one box below to indicate appropriate method of service

☐ Served personally upon the third-party defendant. Place where served: _____☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____☒ Other (specify): Left at the law office of Matthew Giannini, 1040 South Commons Place, Suite 200, Youngstown, Ohio 44514 who is CTM Development Corporation's statutory agent.

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 4/22/05

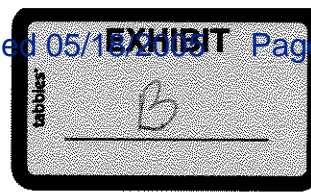
Date

Signature of Server

174 North Park Ave., Suite 3
Warren, Ohio 44481

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.



1 of 1 DOCUMENT

THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE ISSUING GOVERNMENT AGENCY

OHIO SECRETARY OF STATE

Company Name: C.T.W. DEVELOPMENT CORPORATION

Type: CORPORATION FOR PROFIT

Status: IN GOOD STANDING

Status Date: 6/14/2002

Filing Date: 2/6/1987

County: MAHONING

State or Country of Incorporation: OHIO

Business Description: DOMESTIC ARTICLES/FOR PROFIT

Registered Agent:

MATTHEW C GIANNINI

Status: ACTIVE

Creation Date: 2/6/1987

AGENT ID: G098_1698

Registered Office:

1040 SOUTH COMMONS PLACE

SUITE 200

YOUNGSTOWN, OH 44514

Additional Information: PRINCIPAL LOCATION IS CANFIELD

Filing Number: 694797

Internal Number: G098_1698

Incorporators, Applicants:

MATTHEW C GIANNINI

Stock Information:

Type of Stock: NO PAR COMMON

Shares Issued: 500

History:

File Date: 6/13/2002

OHIO SECRETARY OF STATE

Type: DOMESTIC AGENT ADDRESS CHANGE
Document Number: 200216402252

File Date: 3/13/1997
Type: DOMESTIC AGENT ADDRESS CHANGE
Document Number: 5845_0334

File Date: 6/5/1996
Type: MISCELLANEOUS FILING
Comments: TRAIN AMERICARNO
Document Number: 5540_0663

File Date: 6/5/1996
Type: MISCELLANEOUS FILING
Comments: TRAIN AMERICARNO
Document Number: 5540_0659

File Date: 1/19/1994
Type: DOMESTIC CONTINUED EXISTENCE S C
Document Number: 000000255023

File Date: 9/9/1993
Type: DOMESTIC CONTINUED EXISTENCE LETTER S C
Document Number: 000000255022

File Date: 6/1/1992
Type: DOMESTIC AGENT ADDRESS CHANGE
Document Number: H370_0729

File Date: 2/6/1987
Type: DOMESTIC ARTICLES/FOR PROFIT
Document Number: G098_1698



Agent Contact Informati

Agent Contact Information

Agent Name	Agent Address	City	State	Zip	Effective Date	Contact Status
Matthew C Giannini	1040 South Commons Place Suite 200	Youngstown	Ohio	44514	06-FEB-87	Active

Total Row Count in Report- 1

Row(s) 1 - 1

[Back to Menu](#)



DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
06/14/2002	200216402252	DOMESTIC AGENT ADDRESS CHANGE (AGA)	25.00	.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

MATTHEW C GIANNINI ATTORNEY AT LAW
1040 SOUTH COMMONS PLACE
SUITE #200
YOUNGSTOWN, OH 44514

STATE OF OHIO

Ohio Secretary of State, J. Kenneth Blackwell

694797

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

C.T.W. DEVELOPMENT CORPORATION

and, that said business records show the filing and recording of:

Document(s)
DOMESTIC AGENT ADDRESS CHANGE

Document No(s):
200216402252



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 13th day of June, A.D.
2002.

J. Kenneth Blackwell
Ohio Secretary of State

CHANGE OF ADDRESS OF STATUTORY AGENT

OF DOMESTIC CORPORATION

KNOW ALL MEN BY THESE PRESENTS, that the address of

ATTORNEY MATTHEW C. GIANNINI

heretofore appointed as statutory agent to accept service of process, tax notices, demands against

CTW DEVELOPMENT CORPORATION

has been Changed From: 950 Windham Court, Suite 5
Youngstown, Ohio 44512
Mahoning County

Changed To:

1040 South Commons Place, Suite 200
Youngstown, Ohio 44514
Mahoning County

which new address is in the county in which the principal office of CTW DEVELOPMENT CORPORATION is located at 945 WINDHAM COURT, #3, YOUNGSTONW, OHIO 44512.

CTW DEVELOPMENT CORPORATION
CHARTER NO.: 694797

By:

Matthew C. Giannini
MATTHEW C. GIANNINI
SECRETARY

RECEIVED

JUN 13 2002

J. ROBERT DUNN
SECRETARY OF STATE

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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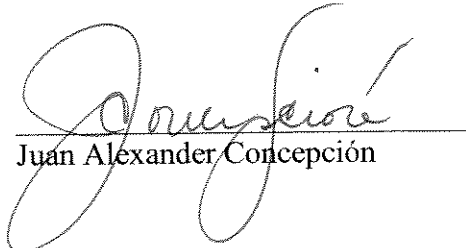
AFFIDAVIT OF NON-MILITARY SERVICE

Juan Alexander Concepcion, being duly sworn, deposes and states:

1. My name is Juan Alexander Concepción. I am over 18 years of age. I am an associate with the law firm of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110 and am duly admitted to practice law in the Commonwealth of Massachusetts and before this Court. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.
2. I am an attorney of record for Plaintiff The Ground Round Independent Owners Cooperative, LLC, in this action. I make this affidavit pursuant to the requirements of 50 U.S.C. App. § 520(1) in support of the request for a default judgment in this matter.
3. On information and belief, C.T.W. Development Corporation is a company organized under the laws of the State of Ohio with its principal office in Youngstown, Ohio. (Affidavit of Juan Alexander Concepción in Support of Plaintiff's Request for Issuance of Notice of Default, Exhibit "B".)

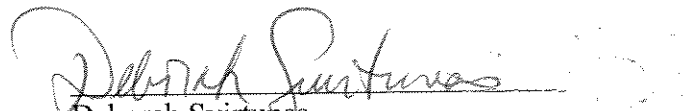
4. On information and belief, I state that C.T.W. Development Corporation is not in military service.

Signed by me on this 18th day of May, 2005, at Boston, Massachusetts.



Juan Alexander Concepción

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of May, 2005.



Deborah Svirtunas
Notary Public in and for the Commonwealth of
Massachusetts
Commission expires: December 17, 2010